

IN THE UNITED STATES COURT OF APPEALS **FILED**  
FOR THE FIFTH CIRCUIT

December 12, 2007

Charles R. Fulbruge III  
Clerk

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No. 07-50897  
Conference Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

CARLOS ANGEL GUZMAN-MARTINEZ

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:07-CR-338-ALL

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Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Carlos Angel Guzman-Martinez raises arguments that are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.